



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref:CO/6913/2012

In the matter of an application for Judicial Review

The Queen on the application of
ROBERT TURNER

versus ISLE OF WIGHT COUNCIL

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgment of Service lodged by the Defendant

Order by H.H. Judge William Davis Q.C., The Recorder of Birmingham

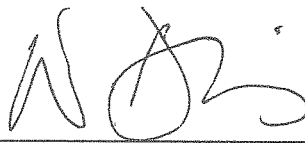
Permission is hereby refused.

Reasons:

1. The Claimant seeks to overturn a decision to approve a report, the purpose of which was to set out the assets which currently make up Newport Harbour Estate. The witness statement of the Claimant makes it clear that his real complaint relates to the current state of the harbour and the lack of investment given to it by the Defendant. That is not something to which the decision related.
2. The Claimant identifies five grounds on which he asserts that the decision of the Defendant was unlawful. Each is unarguable for the reasons set out below.
 - It is said that the Defendant treated the way in which property currently is used as decisive as to whether it was part of the harbour estate. What the Defendant did was to apply the HRO of 1988. That Order uses the phrase "for the time being" in relation to the purpose of any land, building, property etc. The Defendant did not shut out possible future use of sites not being used as part of the harbour estate "for the time being". The second limb of the decision complained of makes explicit the intention of the Defendant to review the position on a regular basis.
 - The Defendant is said to have erred in its approach to the disposal of harbour estate. If any such error has been made by the Defendant, it was not at the time of the decision impugned. The relevant leases were granted in 1998 and 2001. Even if these grants were susceptible to judicial review (which is very doubtful - inter alia for the reasons given in Acknowledgment of Service), time for any application for judicial review has long since expired.
 - It is argued that the Defendant made ultra vires decisions in the past and that the Defendant's approach to those decisions is flawed and unlawful. The factual basis for the argument is misconceived. No relevant lease took any land outside the harbour estate. In any event, insofar as any decision susceptible to judicial review was made, the Claimant is hopelessly out of time.
 - A failure to consult is alleged. Not only was there adequate consultation but also the decision made the Defendant was not one on which there was any obligation to consult.
 - The final ground – an alleged failure to account for the proceeds of the disposal of some of the harbour estate – is wholly unparticularised. It cannot be maintained.
3. The decision complained of was made on the 3rd April 2012. The first indication after the decision was made that any application for judicial review was contemplated was on the 28th June 2012. The claim was lodged only just within the 3 month period. It was not made promptly. It would fail on that ground alone.

The Defendant shall serve a particularised schedule of the costs claimed with any relevant submissions within 21 days of this order and the Claimant shall serve a response thereto within 14 days thereafter. Costs will be summarily assessed thereafter.

Signed



24 October 2012

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date): 12 NOV 2012

Solicitors:

Ref No.

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12



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CO Ref no: CO/6913/2012

In the matter of a claim for Judicial Review

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Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54.12)

1. *This notice must be lodged in the Administrative Court Office and served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*
2. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the reasons for delay:*
3. *Set out below the grounds for renewing the application:*

4. *Please supply*
COUNSEL'S NAME:
COUNSEL TELEPHONE NUMBER:

Signed

Dated

Claimant's Ref No.

Tel.No.

Fax No.

To the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL

FORM 86B